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**From:** Keating, Robert [Keating.Robert@epa.gov]  
**Sent:** 1/2/2014 2:14:18 PM  
**To:** Yeh, Alice [Yeh.Alice@epa.gov]  
**CC:** Flanagan, Sarah [Flanagan.Sarah@epa.gov]  
**Subject:** FW: Appeal of denial of EPA-R2-2013-010288

For your review.

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**From:** Calderon, Wanda  
**Sent:** Tuesday, December 24, 2013 9:15 AM  
**To:** Keating, Robert; Yeh, Alice  
**Subject:** FW: Appeal of denial of EPA-R2-2013-010288

Hello,

The front office was copied on appeal involving a denial of Lower Passaic River files all the while the record shows this remains pending (initially with SC but, I removed her and replaced w/ERRD). Please advise asap. thx

Wanda Calderon  
FOIA Specialist  
Public Outreach Branch  
Public Affairs Division

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**From:** Bellow, Bonnie  
**Sent:** Monday, December 23, 2013 5:48 PM  
**To:** Cohen, Mitchell; Calderon, Wanda  
**Cc:** Mears, Mary  
**Subject:** RE: Appeal of denial of EPA-R2-2013-010288

That's what I figured.

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**From:** Cohen, Mitchell  
**Sent:** Monday, December 23, 2013 5:30 PM  
**To:** Bellow, Bonnie; Calderon, Wanda  
**Cc:** Mears, Mary  
**Subject:** RE: Appeal of denial of EPA-R2-2013-010288

Thanks, but I have had no involvement with this one; OGC will assign the appeal to a staff member..

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**From:** Bellow, Bonnie  
**Sent:** Monday, December 23, 2013 5:14 PM  
**To:** Cohen, Mitchell; Calderon, Wanda  
**Cc:** Mears, Mary  
**Subject:** FW: Appeal of denial of EPA-R2-2013-010288

This was sent to the FOIA email, but I wanted to make sure that you were aware.

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**From:** Enck, Judith  
**Sent:** Monday, December 23, 2013 4:19 PM  
**To:** Bellow, Bonnie; Mugdan, Walter  
**Subject:** Fw: Appeal of denial of EPA-R2-2013-010288

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**From:** Paul Chrostowski <[pc@cpfassociates.com](mailto:pc@cpfassociates.com)>  
**Sent:** Monday, December 23, 2013 8:02:38 PM  
**To:** [hq.foia@epa.gov](mailto:hq.foia@epa.gov)  
**Cc:** Enck, Judith; [oig@epa.gov](mailto:oig@epa.gov)  
**Subject:** Appeal of denial of EPA-R2-2013-010288

National Freedom of Information Officer  
USEPA  
FOIA and Privacy Branch

Dear Sir/Madam:

I am writing to appeal the denial of my FOIA request EPA-R2-2013-010288. This request sought two documents:

1. HDR-HydroQual 2013, Appendix BII – Lower Passaic River Sediment Transport Model, prepared for USEPA Region II, New York
2. HDR-HydroQual 2013, Appendix BIII – Lower Passaic River Contaminant Fate and Transport Model prepared for USEPA Region II, New York.

The request was denied under the 5 USC § 552(b)(5) exemption characterizing the documents as “predecisional and deliberative”. This characterization is incorrect and inappropriate. These documents are merely appendices to the “Lower Passaic River: Lower Eight Miles Focused Feasibility Study” which has been published in full and is publicly available. In fact, Appendix B itself, of which these documents are components, has been made public. These documents have been widely cited by Region II and, in no case, have the citations referred to them being predecisional and/or deliberative. In fact, in the FOIA denial letter, Region II did not even refer to them as draft documents. Regardless of the status of these documents, EPA’s history contains numerous instances of draft documents being released for public information. Even more significantly, EPA has released several related documents including the “Lower Passaic River, Lower Eight-Mile Focused Feasibility Study Sediment Transport, Organic Carbon and Contaminant Fate and Transport Model Charge to Peer Reviewers” in February of 2013 and the “Report of the Peer Review of Sediment Transport, Organic Carbon and Contaminant Fate and Transport Model” in September 2013. The latter is an exhaustive 122-page analysis of the material contained in the requested reports. It is inappropriate for Region II to release a highly critical peer review and its response to peer review comments to the public and not provide the underlying documents. Another example is the ongoing debate between Region II and CSTAG regarding the sediment transport modeling which is important from both a scientific and public policy standpoint and which itself has been a matter of public record since 2008. Finally, EPA has apparently permitted its contractor, HydroQual, to present information regarding the development of these models in public forums. See Robin E. Landeck Miller et al. 2011. Modeling of Sediment Contaminants in the New York/New Jersey Estuary”. Urban Habitats.

In short, this denial was arbitrary and removes from the public eye key documents regarding this very controversial Superfund site. I appreciate your attention to this matter and hope to soon see public release of these documents.

Paul C. Chrostowski, Ph.D., QEP  
CPF Associates, Inc.  
[www.cpfassociates.com](http://www.cpfassociates.com)  
P:301-585-8062  
F:301-585-2117  
C:240-678-8250

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